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Colorado General Assembly

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MEMORANDUM

TO: Martha Olson and Donald Anderson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: December 19, 2017

SUBJECT: Proposed initiative measure 2017-2018 #86, concerning funding for public schools

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of these proposed initiatives, proposed initiatives 2017-2018 #72 to #79, were the subject of memoranda dated November 17, 2017, which were discussed at a public meeting on November 21, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and

questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

1. The major purposes of the proposed amendments to the Colorado constitution appear to be:
 - a. To create a more sustainable, fair, and adequate system for school finance to prepare every student for success in career, college, and life.
 - b. To create the quality public education fund (fund) in the state treasury to receive all revenues collected through an income tax increment for public school funding.
 - c. To allow the general assembly to annually appropriate money from the fund for purposes specified in law to improve, support and enhance the quality of pre-primary, primary, and secondary public school educational program, resources, and opportunities on an equitable bases for the benefit of students statewide.
 - d. To use money appropriated from the fund to supplement, not supplant, the level of general fund appropriations existing on the effective date of the initiative.
 - e. To create an exception to TABOR to allow taxable net income of individuals, trusts, estates, and corporations to be taxed at multiple rates to provide a tax increment dedicated to the funding of pre-primary through secondary public schools.
2. The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:
 - a. To express the intention of the people that a more sustainable, fair, and adequate system for school finance is necessary to achieve the goals of the initiative.
 - b. To determine the purpose of the fund, to implement the provisions creating the fund in the Colorado constitution, and to require annual appropriations from the fund.
 - c. To express the intention of the people that the general assembly enact a new public school finance law that substantially meets the requirements set forth in the proposed initiative.

- d. To establish the purposes for which the money in the fund must be appropriated and spent until such time as a new public school finance law has been enacted and has taken effect.
- e. To require all money appropriated from the fund to be expended to support public schools, except as required by an individualized education program for an individual with a disability.
- f. To use money appropriated from the fund to supplement, not supplant, the level of general fund appropriations existing on the effective date of the initiative, plus annual inflation adjustments.
- g. To require each school district receiving money from the fund to make publicly available information concerning its mission and vision, current budget, audit, uniform improvement plan, and student achievement scores.
- h. To require the Colorado department of education within five years of implementation of the fund to commission a study on how money from the fund was spent as well as other reporting regarding the impact of the funding.
- i. To require the general assembly to review a successor public school finance act within specific time frames.
- j. To increase income taxes imposed on certain individuals, estates, and trusts by creating an income tax increment for public school funding dedicated to the fund at graduated rates specified in the proposed initiative based on the federal taxable income of the taxpayer.
- k. To increase income taxes imposed on corporations by creating an income tax increment for public school funding dedicated to the fund at a rate specified in the proposed initiative.
- l. To require that revenue generated from the tax increment for public school funding be credited to the fund.
- m. To authorize the state to retain and spend all revenue from the tax increment for public school funding as a voter-approved revenue change.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. In section 39-22-104 (1.7)(b), the federal taxable income range ends at a taxable income of \$300,000. However the federal taxable income range for subsection (1.7)(c) starts at taxable incomes over \$350,000. Did the proponents intend for there to be a \$50,000 gap in the income ranges? Is there no tax increment on income over \$300,000 but less than or equal to \$350,000?
2. Pursuant to section 22-55-109 (4), money from the quality public education fund shall be appropriated and expended to support public schools; except that money from the fund may be spent as required by an individualized education program under federal law for students with disabilities.
 - a. Does this language mean that money may not be appropriated from the fund or spent to support private schools unless it is required by an individualized education program pursuant to federal law for students with disabilities?
 - b. Would this language prohibit the state or a school district from creating a voucher or scholarship program or education savings account that could be used for tuition at private schools or other contracted educational services from private schools, unless the program is designed to serve a child with an individualized education program?
3. Does the use of the term "adequate" in section 17 (4.5)(a) of article IX of the Colorado constitution and section 22-55-109 (1)(e) and (6)(c) relate to the adequacy of school funding to meet stated goals or the quality of education provided, or both? Who determines adequacy?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Section 1 of the proposed initiative, which creates a new subsection (4.5) of section 17 of article IX of the state constitution, reads "THIS SECTION SHALL BE KNOWN AND CITED AS THE QUALITY PUBLIC EDUCATION FUND AMENDMENT OF 2018" Is the objective to rename all of section 17 the quality public education fund amendment of 2018? Or is the objective to name the newly created subsection (4.5) the quality public education fund amendment of 2018? If the latter, the language should be written as follows:

THIS SUBSECTION (4.5) SHALL BE KNOWN AND CITED AS

2. It is standard drafting practice to only capitalize proper nouns, such as "Colorado," and not the names of funds, such as the quality public education fund. However, if put within quotations, a short title may be initial capitalized. For example:

(4.5) (a) THIS SECTION SHALL BE KNOWN AND CITED AS THE "QUALITY PUBLIC EDUCATION FUND AMENDMENT OF 2018".

(6) (c) WITHIN TEN YEARS AFTER THE IMPLEMENTATION OF A SUCCESSOR TO THE "PUBLIC SCHOOL FINANCE ACT OF 1994", AND

3. Each number or letter referred to in an internal reference should be surrounded by parentheses. For example:

(3) (b) UNTIL SUCH TIME AS COMPREHENSIVE NEW PUBLIC SCHOOL FINANCE LAW SUBSTANTIALLY IN COMPLIANCE WITH SUBSECTION (3)(c) OF THIS SECTION

4. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized: The first letter of the first word of each entry of an enumeration paragraphed after a colon. For example:

(1.7) (a) OVER THREE HUNDRED FIFTY THOUSAND DOLLARS AND UP TO

5. When there is an introductory portion, it is necessary to include that language when amending any subsequent language relating to it. For example, amendments to section 39-22-623 (1)(b), C.R.S., should be written as follows:

39-22-623. Disposition of collections. (1) The proceeds of all moneys collected under this article, less the reserve retained for refunds, shall be credited as follows:

(b) Following apportionment